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12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA

14 * * *

15 CAROLINE SCHAEFER,

2:14-cv-01900-GMN-CWH

16 Plaintiff,

17 vs.

18 DIAMOND RESORTS INTERNATIONAL
19 MARKETING, INC., a California corporation;
20 DARRYL TROY PARTIN, an individual;
21 ROE BUSINESS ENTITIES I through X,
22 inclusive; and DOES I through X, inclusive.

23 Defendants.

24 PARTIAL MOTION TO DISMISS
25 DEFENDANT DARRYL TROY
26 PARTIN'S COUNTERCLAIMS
27 AND TO EXTEND TIME FOR
28 FILING OF PLAINTIFF'S
ANSWER AND ORDER THEREON

29 PARTIAL MOTION TO DISMISS DEFENDANT
30 DARRYL TROY PARTIN'S COUNTERCLAIMS
31 AND TO EXTEND TIME FOR FILING OF PLAINTIFF'S ANSWER

32 COMES NOW Plaintiff, Caroline Schaefer ("Caroline"), by and through her counsel of
33 record, ALVERSON, TAYLOR, MORTENSEN & SANDERS, and hereby moves the Court to
34 dismiss Defendant Darryl Troy Partin's first, third and fourth counterclaims. Plaintiff also
35 requests an extension of time for filing her answer to Defendant's remaining counterclaim, until
36 ten days after the time this Court rules on this Partial Motion to Dismiss.

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This Motion is made and based upon the pleadings and papers already on file, the memorandum of points and authorities contained herein, any exhibits hereto and any oral argument as may be requested by the Court.

DATED this 17 day of July, 2015.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS



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POINTS AND AUTHORITIES

INTRODUCTION

Defendant seeks to bring claims against Caroline, which, in addition to being unfounded, are also unrelated to this matter and should not be allowed in this matter due to a lack of supplemental jurisdiction. Domestic disputes over paying of rent and return of a bicycle have no place in a sexual harassment case dealing with workplace conduct. These claims are neither of the same case and controversy nor do they involve any common nucleus of operative fact.

LEGAL ANALYSIS

NO SUPPLEMENTAL JURISDICTION EXISTS FOR MANY OF DEFENDANT PARTIN'S CLAIMS TO BE HEARD IN THIS COURT

Defendant Partin brings two counterclaims, for conversion and breach of contract/promissory estoppel, which have nothing to do with this case and controversy, and which lack the required supplemental jurisdiction to be asserted as counterclaims herein.

1 “...in any civil action of which the district courts have original
2 jurisdiction, the district courts shall have supplemental jurisdiction
3 over all other claims that are so related to claims in the action
4 within such original jurisdiction that they form part of the same
case or controversy under Article III of the United States
Constitution.”¹

5 A counterclaim brought without an independent basis for jurisdiction must be of the
6 “same case or controversy” to receive the supplemental jurisdiction required for this Court to
7 hear it. The same case or controversy requirement “is met where the claims share a ‘common
8 nucleus of operative fact’.”²

9 All operative facts in this case revolve around Caroline’s work at Diamond and her
10 termination from Diamond. Even Caroline’s claims against Partin are based upon workplace
11 conduct. This Court is not the proper place to handle domestic disputes such as splitting of rent
12 and utilities and return of a bicycle. These claims are best brought in a state small claims court.

13 Partin’s claim for conversion claims only that Schaefer took his mountain bike and
14 refuses to return it, and that Partin is unable to ride the mountain bike recreationally or use it as
15 an alternate form of transportation. This has nothing to do with the outstanding claims, and,
16 importantly, has no common nucleus of operative fact with the Title VII claims which give this
17 Court its jurisdiction.
18

19 Partin’s claim for breach of oral contract, and his claim for promissory estoppel which he
20 joined in the same cause of action, alleges only that after Partin and Schaefer moved to Las
21 Vegas that Schaefer agreed to pay a portion of rent and utilities each month, and that she did not
22 pay such for July and August of 2013. Again, these claims do not contain any common nucleus
23 of operative fact with Caroline’s Title VII claims, or any other claims in this matter. The
24 operative facts surrounding these claims include an alleged oral contract supposedly entered into
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27 ¹ 28 USC 1367.

28 ² *Nelson v. County of Sacramento*, 926 F.Supp.2d 1159, 1170 (quoting *Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163, 1174 (9th Cir. 2002).

1 before Partin and Schaefer even worked together at Diamond. The operative facts involve
 2 domestic agreements and conduct unrelated to the workplace, and completely unrelated to
 3 Caroline's Title VII claims.

4
 5 **PLAINTIFF REQUESTS AN EXTENSION OF TIME TO FILE HER ANSWER TO ANY**
 6 **OF DEFENDANTS' REMAINING COUNTERCLAIMS**

7 While Plaintiff believes that her time to Answer is automatically stayed until the decision
 8 on this Motion to Dismiss, she acknowledges that there is a split in authority on this issue, in the
 9 case of a partial motion to dismiss. The majority view is that a Defendant's time to answer is
 10 automatically extended by filing a Motion to Dismiss.³ The minority view states the opposite.⁴
 11 Given the split in authority, and that Plaintiff has found no authority on point in the 9th Circuit,
 12 Plaintiff asks that this Court formally grant a 21-day extension of time to file her Answer to any
 13 remaining Counterclaims, commencing from the date a dispositive Order is entered on this
 14 Motion.

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 27 ³ See *Business Incentives Co. v. Sony Corp.*, 397 F.Supp. 63 (S.D.N.Y. 1975).

28 ⁴ See *Gerlach v. Michigan Bell Tel. Co.*, 448 F.Supp. 1168 (E.D. Mich. 1978).

CONCLUSION

Plaintiff, Caroline Schaefer, hereby requests that this Honorable Court Dismiss Defendant Darryl Troy Partin's Counterclaims of Conversion, Breach of Oral Contract and Promissory Estoppel, as such fail to have supplemental jurisdiction under 28 USC 1367. Further, Plaintiff respectfully requests an extension of time of 21 days to file her Answer to any remaining Counterclaims from the date a dispositive Order is entered on this Motion.

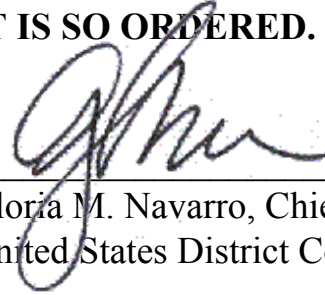
DATED this 10 day of July, 2015.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS



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IT IS SO ORDERED.



Gloria M. Navarro, Chief Judge
United States District Court

DATED: 07/31/2015.

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